FILED
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ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY__________________ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BEVERLY MICHELLE MOORE	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-09-985-C
	)	
WARDEN MILLICENT NEWTON-EMBRY,	)	
	)	
	)	
Respondent.	)	

EX PARTE MOTION TO AUTHORIZE PAYMENT OF OPHTHALMOLOGY EXPERT

Petitioner, Beverly Michelle Moore, respectfully requests that the Court authorize pursuant to 18 U.S.C. § 3006(A)(e)(1) the expenditure of funds for the procurement of an expert witness. In support of her requested, Petitioner states the following:

1. Petitioner has filed a petition for habeas corpus, alleging the ineffective assistance of her trial counsel for failure to present expert witnesses to challenge the State's evidence against her.

2. The State's evidence at trial consisted solely of medical testimony and the "admissions" made by Ms. Moore during a police interrogation.

3. Respondent has challenged Petitioner's habeas petition as untimely. Petitioner, however, asserts that equitable tolling applies to her claim because she is factually innocent of the crime for which she is convicted. Petitioner's equitable tolling defense places a significant burden on her to demonstrate with evidence not presented

at trial that, in light of that evidence, it is more likely than not that "no reasonable juror would find [her] guilty beyond a reasonable doubt." Schlup v. Delo, 513 U.S. 298, 324 (1995). In determining whether Petitioner has met the Schlup standard, the Court is required to review all of the relevant evidence, including that presented at trial, including her prior "admissions." Id. at 328.

4. One of the experts who testified against Ms. Moore at her trial was an ophthalmologist. This ophthalmologist had examined A.S. after Ms. Moore had been arrested to see if A.S..'s eye findings were consistent with Shaken Baby Syndrome. The doctor testified at trial that A.S. suffered from bilateral retinal hemorrhaging, and that the bleeding had caused a retinal detachment in one eye. The ophthalmologist testified that the *only* cause of these injuries was trauma, specifically, shaking. The prosecution argued to the jury that the ocular findings were "key" because they unquestionably established that A.S. was shaken.

5. Petitioner has obtained a review of the medical information in this case from multiple experts, including a forensic pathologist. The forensic pathologist has concluded that A.S. suffered from a coagulation disorder, which has been scientifically linked to retinal hemorrhaging and injuries such as those presented by A.S.

6. Because the ocular findings were so significant at Petitioner's trial because they provided what was purported to conclusive proof that A.S. had been shaken violently, Petitioner contends that review of the relevant medical records by an independent

ophthalmologist is warranted to further explore the connection between the child's other medical conditions, including the reported coagulation disorder, and the ocular findings. Obviously if the ocular findings are attributed or even attributable to causes *other* than shaking, such information would have great impact on the reliability of the testifying ophthalmologist's testimony and Petitioner's claim of actual innocence.

7. Because review and interpretation of the ocular findings are outside the knowledge of a lay person and, indeed, are the subject of a specialized field of medical knowledge - ophthalmology, review of the records by an ophthalmologist is critical to ensure Petitioner has a full and fair hearing on a clearly disputed factual issue that is essential to Petitioner's actual innocence claim.

8. Petitioner has consulted with an expert who has agreed to review Petitioner's medical records and provide an expert opinion as to the significance of the ocular findings in light of all of the other relevant medical testimony. The proposed expert's curriculum vitae is attached as exhibit 1. By a review of that vitae, the Court can see that the proposed expert is highly qualified in the field of ophthalmology and especially in interpreting the implications of ocular findings as they relate to shaken baby syndrome. The ophthalmologist is aware of the time sensitive nature of this consultation, as the Court has set a deadline of March 30 in which to submit any other evidence potentially relevant to the question of Ms. Moore's innocence.

9. Petitioner is requesting that the Court authorize the total of $1,500 for this expert's

services, which includes a complete an unlimited medical review of all records, autopsy records, and ocular slides, as well as consultation and providing a written report or declaration as to findings, should such a report/declaration be necessary or desired.

10. Petitioner is indigent and has appointed counsel. Because the anticipated expense is greater than $500, counsel must seek prior approval to expend government funds on behalf of an expert.

Relief Requested

To ensure that Petitioner can fully and fairly demonstrate her actual innocence, as well as demonstrate the constitutionally deficient assistance received during her trial and appeal, Petitioner respectfully requests that the Court authorize the expenditure of funds to hire an ophthalmologist to review and provide insight into the significance or lack thereof of any eye findings as to determining the cause of A.S.'s death.

Respectfully Submitted,

s/Christine Cave
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CERTIFICATE OF SERVICE

Document was filed ex parte, which does not require service on opposing counsel.